IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA LAMBERT, Plaintiff, vs. SUPERINTENDENT WILLIAM WOLFE, Defendant. — Civil Action No. 96-247 Erie

SYLVIA VASQUEZ, Plaintiff, vs. SUPERINTENDENT WILLIAM WOLFE, Defendant. — Civil Action No. 96-429 Erie

ROBIN PHILLIPS, Plaintiff, vs. SUPERINTENDENT WILLIAM WOLFE, Defendant. — Civil Action No. 98-59 Erie

-----

COUNSEL PRESENT:

For the Plaintiffs: Jere Krakoff, Esq.

For the Defendant: Thomas F. Halloran, Esq.
Senior Deputy Attorney General

A 105

DEPOSITION OF VAUGHN DAVIS, a witness herein, called on behalf of the Plaintiffs for examination, taken pursuant to the Federal Rules of Civil Procedure, by and before Maria M. Schaffner, Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the Office of the Attorney General, 564 Forbes Avenue, 5th Floor, Pittsburgh, Pennsylvania, on Monday, March 1, 1999, at 11:20 a.m.

A 106

A. 57.

Q. And I understand that you're no longer employed at OPR; is that correct?

A. That's correct.

Q. Are you still employed with the state?

A. Yes.

Q. With what agency?

A. Department of Labor and Industry.

Q. When were you last employed by the Department of Corrections?

A. June of '97.

Q. I take it that you were employed by OPR until the very end?

A. I was employed by OPR until December '96.

Q. Where did you go after December or in December?

A. Department of Community Corrections.

Q. And you started there in January of '97?

A. I was there in -- from January till June, yes.

Q. How long had you been employed -- and by the way, I know that OPR at one point was called

V. Davis - by Mr. Krakoff

by another name. But when I say OPR, I mean it to include whatever its title was during the time that you were working at the agency.

How long had you been employed at OPR? When did you begin working there and how long from there --

A. From April '92 until December 30th, '96.

Q. When you began working at OPR, what was your position there?

A. Director of Investigations.

Q. Did you remain director during your entire tenure at OPR?

A. Yes.

Q. How many investigators did you have working for you when you began?

A. Five.

Q. Did that change after you began working as the director?

A. I believe it basically stayed the same.

Q. I'd like you to outline the basic functions of OPR during the time that you were there, its mission and what it was expected to do.

V. Davis - by Mr. Krakoff

investigating or this is something we're going to investigate; is that correct?

A. I may or may not that make that judgment at that point. I'm looking for facts.

Q. Were there occasions when OPR and institutional-level people worked together on an investigation simultaneously?

A. Yes.

Q. And were there occasions involving allegations of staff-on-inmate abuse where the investigation would be conducted from beginning to end by institutional-level people?

A. Yes.

Q. And then there were occasions, I take it, when OPR would conduct either all or virtually all of an investigation; is that correct?

A. That's true.

Q. I think you've already identified some of your responsibilities as the director of OPR. But what I'd like you to do, and it doesn't have to be in great detail, but I'd like you to summarize what your basic responsibilities were as the director of OPR.

V. Davis - by Mr. Krakoff

(Short pause in the proceedings.)

Q. Now, during the time that you were the director of OPR, did OPR conduct any investigations of alleged sexual misconduct by members of the Cambridge Springs staff against Cambridge Springs inmates?

A. Yes.

Q. What I'm going to do today is to ask you to recall for me the investigations that occurred of that sort during the time that you were the director. And what I'd like you to do is to identify the name of the staff member.

A. I recall the name Zimmerman.

Q. Okay.

A. The name Walton, the name Raun, Eicher, Miller. Those are the names I can recall.

Q. As we go through the materials, there may be some other references that will refresh your recollection.

Do you have any recollection of any investigations of alleged sexual abuse by Cambridge Springs personnel against Cambridge Springs inmates conducted by prison-level staff of which OPR was not involved in?

A. No, I don't recall any.

Q. Does that mean that you don't have a recollection of any names or you don't have any recollection of that having occurred while you were the director?

MR. HALLORAN: Let me -- you can answer the question.

A. I don't recall any specific allegation against staff that they investigated, "they" meaning Cambridge Springs, and we didn't.

Q. Okay. What is the first investigation you recall of that sort conducted by OPR? And I'm confining this to sexual abuse by Cambridge Springs personnel against Cambridge Springs inmates.

A. My recollection is that it was a staff member named Zimmerman.

Q. What do you recall about the charges -- the allegations in that case?

MR. KRAKOFF: Don't put charges in.

Q. What do you recall about the allegations in that case?

A. The staff member was a maintenance

V. Davis - by Mr. Krakoff

A. Yes.

Q. -- before you left --

A. Yes.

Q. And do you recall generally what the conclusion of OPR was with respect to the allegations?

A. We found the subject in that case was culpable of sexual misconduct.

Q. At the time of the Zimmerman investigation, did the Crimes Code make it a crime for prison personnel to engage in sexual activity with inmates?

A. Yes.

Q. And what OPR concluded Zimmerman had done, did that fall under the provisions of either 3125 or 3126 of the Crimes Code?

A. Not to the best of my recollection.

Q. Was a recommendation made by OPR as to whether criminal charges should be filed against Zimmerman?

A. I don't recall.

Q. If they were recommended, where would such a recommendation as a matter of practice while you were at OPR be contained?

jurisdiction.

Q. But within the department itself, was anybody else's authorization something that you required before OPR would initiate criminal charges?

A. No.

Q. Did the commissioner ever tell you that you weren't authorized to initiate criminal charges for sexual misconduct without his permission?

A. Not to my recollection.

Q. But that was your practice while you were OPR director?

A. That's right.

Q. Under the Crimes Code as you understood the Crimes Code, was consent a defense?

A. No.

Q. As a matter of your practice, did an inmate's apparent consent play a part in the determination at OPR as to whether to initiate criminal charges against a staff member?

A. No.

Q. So your approach essentially paralleled the Crimes Code in that regard?

A. Yes.

Q. Now, apart from the Crimes Code -- and let me represent to you that I listened to your presentation at Cambridge Springs, but I represent to you that in that presentation, you discussed how consent was not an issue because in the wisdom of the general assembly, they decided not to get into the issue of consent. Do you recall saying that?

A. I believe that, yes, was part of the lecture.

Q. Now, let me refer you to Volume III, Exhibit No. 127. This is a multipage document.

A. Okay.

Q. The first page is a fax cover sheet, and this fax was sent by H. Rodriguez. That's the clerical person that you identified earlier as being responsible on occasions where a copy of the report was distributed to a superintendent, she would take care of that, correct?

A. That's true.

Q. But I take it that she wouldn't send it unless you told her to send it; is that correct? Is that the way it works?

V. Davis - by Mr. Krakoff

friend, no.

Q. Any of the other administrators?

A. I had heard that he was friendly with Deputy Utz.

Q. Now, was there any effort that you can recall to determine after this report whether Zimmerman had been sexually involved with any other Cambridge Springs inmates?

A. I don't recall any.

Q. Do you have any recollection of any effort being made to determine whether Zimmerman had been involved sexually with any other women apart from Lisa Gunnarson in the course of this particular investigation?

A. No.

Q. If there was an allegation that a member of the staff had been involved sexually with an inmate, what was the practice at OPR with respect to attempting to determine whether there were other inmates who had been sexually abused or possibly sexually abused by the staff member?

A. Through the course of the investigation, any evidence or any information gathered that

V. Davis - by Mr. Krakoff

reading?

THE WITNESS: Third paragraph.

Q. So I think the Freddy's appears to have described the whole place, I guess, rather than just that room.

Captain Bartlett, SCI-Cambridge Springs, conducted an investigation into this and told Mr. Wolanin that in this area he found a room on the first floor with a couch, chair, table and heater inside. He also found that the door had a latch to lock it from the inside and that only maintenance had a key to this room.

You'll note that an informant, according to this, had said that Zimmerman had been seen taking not only Gunnarson, but also another inmate to Freddy's house.

Do you have any recollection of whether there was an investigation to determine whether Mr. Zimmerman had preyed upon the other inmate?

A. No, I don't.

Q. Now, did the OPR have a policy with respect to whether an alleged inmate/victim of sexual abuse should be given a Miranda warning in connection with being interviewed? Did you

V. Davis - by Mr. Krakoff

have a policy one way or the other as to whether the alleged victim should be Mirandized?

A. No.

Q. So did you ever ask your investigators to Mirandize an alleged victim?

A. No.

Q. Did you expect them to Mirandize the alleged victim in the course of the investigation?

A. It would be entirely dependent on the circumstances and the information that we're gathering, you know, during the course of the interview.

Q. Okay. Under what circumstances, if you will, would the alleged victim be given Miranda warnings?

A. If it appeared because of their admissions that there was something criminally culpable.

Q. If the issue is whether or not a staff member allegedly committed any of the acts that I described in the definition of sexual misconduct, would that indicate Mirandizing the inmate?

V. Davis - by Mr. Krakoff

MR. HALLORAN: That alone?

MR. KRAKOFF: That in itself, without more.

A. Could you repeat that?

Q. Okay. In other words, if an inmate alleged that one of the acts that would constitute sexual abuse -- kissing, hugging, fondling, being touched in any of those areas that I described, or being pressured into sex or being threatened or forced into sex -- if those were the allegations, without more, would you --

MR. HALLORAN: Go ahead. I'm going to make an objection to the form of the question. Are you talking about an inmate, witness or --

MR. KRAKOFF: No. We're talking about the alleged victim.

A. The alleged victim.

Q. Would Mirandizing that victim under those circumstances be warranted?

A. Under the circumstances you've just described?

Q. Right, yes, right.

A. Hypothetical as they may be?

V. Davis - by Mr. Krakoff

Q. Right.

A. No.

Q. Okay. You were talking, I take it, about a situation where perhaps the alleged victim testified Officer So-and-so sexually touched me, and when he did that, I got so angry I shot him. That would be -- I mean, that might be an extreme example, but is that that type of situation where you say maybe Mirandizing the alleged victim might be in order?

A. That might be, yeah. That might be an appropriate circumstance.

MR. HALLORAN: In the form of that question -- correct me if I'm wrong -- you're asking him whether the victim is potentially --

MR. KRAKOFF: Incriminating herself.

MR. HALLORAN: -- incriminating herself in some conduct? Even if you think that might be happening, a Miranda might be appropriate?

MR. KRAKOFF: Right.

Q. Is that right?

A. Yes.

V. Davis - by Mr. Krakoff

Q. That's a much clearer way of putting it.

What about if I put the same question to you with respect to interviewing witnesses as to alleged sex abuse by a staff member against an inmate. In the absence of the witness potentially incriminating himself or herself, was it your practice to have your investigators Mirandize the witness?

A. No.

Q. Was there a negative potential to Mirandizing an alleged victim or a possible witness to staff-on-inmate abuse from the standpoint of gathering information?

A. Was there a negative impact that exists -- did it exist?

Q. Well, was there a potential when if the alleged victim or the witness were Mirandized, did that potentially have an impact on acquiring information from the alleged victim or the witness?

A. I don't recall it ever being done. I have -- the answer to your question is if it were done, I have no way of knowing whether that would have a negative impact or not. Too many variables.

Q. Well, when somebody is warned anything they say might be used against them in a court of law, isn't that going to have a potential downside to gathering information?

A. I don't know. I don't know. I think, first of all, it's not a warning. It's simply an advisement of your rights. I don't look at it as a warning, so I wouldn't use it as a tool to extract or in any other fashion try to compromise the truth.

Q. Are you aware of any of the security captains or security lieutenants at SCI-Cambridge Springs Mirandizing either the alleged victim or alleged inmate witnesses to sexual abuse?

A. No.

Q. So I take it you didn't advise them or recommend that they do that?

A. Absolutely not.

Q. Did OPR while you were the director provide any training to either Captain Lazenby, former Captain Bartlett, Lieutenant Beck or

A 121

V. Davis - by Mr. Krakoff

other staff members in the conduct of investigations?

A. No.

Q. How to conduct investigations?

A. No.

Q. Let me refer you to --

A. Could I back up on that?

Q. Sure.

A. My recollection is that we did sponsor some seminars regarding basic investigative procedures. The officers you've just named would have been invited and may well have been in attendance.

Q. I see.

A. Those seminars would have been held at the training academy in Elizabethtown.

Q. Okay.

A. So I guess the answer to your question is that it's very possible that they did receive some training as a result of special investigations, either coordinating a seminar or participating in a seminar.

Q. Let me refer you to Exhibit No. 126. This is a five-page exhibit. It concerns the

V. Davis - by Mr. Krakoff

Q. Okay. Lehman. And you said particularly in female institutions. What did you mean by that?

A. There are only two female institutions in the state, and the awareness level of sexual fraternization tends to be a little more higher on the agenda in those institutions.

Q. Do you know why that's the case?

A. No.

Q. Now, did Mr. Lehman ever express to you concerns about a sexual abuse incident at Cambridge Springs while he was the commissioner?

A. No.

Q. What about Mr. Horn?

A. No.

Q. What about Mr. Fulcomer?

A. Mr. Fulcomer and I discussed sexual misconduct incidents and investigations at Cambridge Springs frequently.

Q. Did he ever express to you that he was concerned about the incidents of alleged sexual abuse at Cambridge Springs?

A. Could you be more specific about --

Q. The frequency of it or the number of

V. Davis - by Mr. Krakoff

allegation of sexual abuse at Cambridge Springs.

A. I don't believe so, no.

Q. What about Superintendent Wolfe?

A. No, I don't believe that Superintendent Wolfe discussed, you know, the specific frequency of sexual abuse allegations at Cambridge Springs with me overtly.

Q. Now, what do you mean by "overtly"?

A. I mean where he would initiate that conversation when there wasn't any particular issue at hand. Obviously, if we had an investigation there I spoke to the superintendent about that particular investigation.

Q. Right.

A. But I don't recall him initiating, you know, a great concern that he had relative to --

Q. In general?

A. Yeah, in general.

Q. Okay.

A. Exactly.

Q. Now, did you have any direct involvement in the investigation -- in the Miller,

V. Davis - by Mr. Krakoff

there was video equipment utilized. And again, my recollection of the first time I was there, I specifically recall a camera that was set up in the auditorium. It was a stationary thing.

Q. Okay.

THE WITNESS: I don't know where you got this tape from. The DOC, from somebody at DOC, Tom.

Q. You don't know what tapes exist at this point, do you?

A. No, I don't.

Q. Have you given any lectures on sexual abuse by staff against inmates at any of the male institutions?

A. Not to my recollection.

Q. Now, a question or two about your background. You made reference to the fact that you were an instructor at Indiana University of Pennsylvania; is that correct?

A. Yeah.

Q. And what was your area of instruction?

A. A variety of areas in the criminal justice training center, the police academy and lethal weapons training academy. It involved